ATTEMPT ON THE LIFE OF PRESIDENT EDUARD SHEVARDNADZE OF GEORGIA

Mr. BROWNBACK. Mr. President, I serve on the Foreign Affairs Committee and I note, last night an attempt was made on the life of President Eduard Shevardnadze of The Republic of Georgia by assailants who have yet to be identified. President Shevardnadze survived the attack without injury. Unfortunately several members of his personal security detail were killed, and number of others were wounded.

The Republic of Georgia is one of the key linchpins of the new Eurasia. It is the most democratic of all of the states that succeeded the Soviet Union. Under President Shevardnadze's inspired leadership a civil war has been put to rest, criminals have been jailed, private armies have been disarmed, and economic decline has been reversed. In 1997, Georgia's economy grew by nearly 8 percent, inflation was held in check and the Georgian currency remained rock solid. Democracy has flourished. Indeed, if democracy is allowed to fail in Georgia, it is unlikely to succeed anywhere in the region.

Any attempt to kill Shevardnadze must be seen in those context. It is an attempt to derail a successful democratic process, and an effort to compromise the growing number of U.S. economic and strategic interests in Georgia and the region.

According to Georgian authorities, the attempted assassination was well-planned and well-executed by as many as 30 well-trained assailants. They were armed with rocket propelled grenades and automatic weapons. The Georgians are asking, as we must ask: How could a group this size operate undetected in the capital of Georgia? Where did they receive arms and ammunition? Who trained them? Where did they disappear to in the aftermath? And most importantly: Whose interests do they represent?

Georgian authorities make it clear that they suspect outside powers of this attempt on the life of their president. They are not alone. Azerbaijan's president Aliyev was also the object of an assassination attempt in recent days, which Azerbaijani authorities believe was planned and executed by outsiders. We should be mindful that these two cowardly acts may be part of a plan to destabilize the Caucasus with the intention of scaring off American and other investors who seek to bring the Caspian's great energy wealth west to international markets.

Who benefits from promoting instability in the Southern Caucasus at this time? Russia is everyone's leading candidate as the outside power with the most to gain. Russia has long raged and conspired to thwart Caspian energy from flowing any direction but north through Russia. Most parts of Russia's political elite still view Caspian wealth as their own. The suspected perpetrator of an earlier assassination attempt on Shevardnadze remains under Russian care despite vociferous demands from Georgia that he be extradited. Russia still has bases in Georgia from which yesterday's attack could be planned and staged. None of this is proof of Russian complicity, but the strong suspicion of Russian involvement will not go away quickly.

The U.S. Government should make every effort to learn the truth. More than this, we must articulate in clear and forceful terms to those outside powers who might be tempted to destabilize the Caucasus some simple truths:

First, the United States has vital interests in the Caucasus which these attacks threaten.

Second, our support for President Shevardnadze and the other Caucasian leaders is unbending.

Third, we will do everything we can to facilitate democracy and free markets in the region.

Fourth, oil and gas will flow west.

And finally, we must make it painfully evident that outside states that seek to destabilize America's friends in the Caucasus are not states we will favor with political and economic aid and other forms of assistance.

The attempt to kill President Shevardnadze, one of America's most valued friends, is intolerable and will have consequences.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

JUDICIAL VACANCIES

Mr. GRASSLEY. Mr. President, lately, there has been a lot of talk about Chief Justice Rehnquist's ''Year End Report on the Federal Judiciary.'' As chairman of the Sucommittee on Administrative Oversight and the Courts, I have an added interest in what the Chief Justice has to say. According to some, the Chief Justice's report indicates that the federal judiciary suffers from a partisan produced ''vacancy crisis.'' Indeed, some critics have gone so far as to feverishly conclude that the Senate's Constitutionally mandated confirmation process has become an ''obstruction of justice.'' Caught up in this frenzy, some Democrats have come to the Senate Floor blaming many, if not all, of the judiciary's problems on vacancies. Vacancies, however, are not the source of the problem.

Despite assertions to the contrary, the Chief Justice could not have been more clear on this point: Vacancies are the consequence of what he perceives to be an overburdened judiciary. In fact, the Chief Justice pointed out that it is the judiciary's increased size and expanded jurisdiction that is the major threat to justice in the United States. In his Report, Chief Justice Rehnquist warned that the federal judiciary had become ''so large'' that it was losing ''its traditional character as a distinctive judicial forum of limited jurisdiction.''

Mr. President, in addition to what the Chief Justice said about the size of the judiciary has become ''so large'' that it was losing ''its traditional character as a distinctive judicial forum of limited jurisdiction,'' I ask unanimous consent to have printed in the RECORD an article by Chief Judge Harvie Wilkinson III of our Circuit Court of Appeals entitled ''We Don't Need More Federal Judges.''

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Feb. 9, 1998]

WE DON'T NEED MORE FEDERAL JUDGES

(By J. Harvie Wilkinson III)

The tune is so familiar that most federal court watchers can whistle it in their sleep. Add more and more judges to the federal bench, goes the refrain, and all will be well.

Well, Congress has been adding judges for years now, and somehow each new addition never seems to be enough. The trend has been dramatic. At midcentury, the number of authorized federal judgeships stood at approximately 280. Today, the number of authorized judgeships is 846. And the process shows no signs of abating. The Judicial Conference of the U.S. has asked Congress for 17 additional judgeships for the 13 circuits on the U.S. Court of Appeals—12 permanent judgeships and five ''temporaries.'' Under the conference's proposal, the Ninth Circuit alone would increase to 37 judgeships from the already unwieldy 28.

The federal judiciary is caught in a spiral of expansion that must stop. With growth in judgeships comes growth in federal jurisdiction. And with the expansion of federal jurisdiction comes the need for additional federal judges to keep pace. Whether the growth in judges precedes the growth in jurisdiction or vice versa is anybody's guess. The one follows the other as the night follows the day.

The process of growth has not been a carefully examined one. Rather, it is fueled by a mechanical formula that presupposes that every increase in case filings must be met not with judicial efficiencies or jurisdictional restrictions but with additional battalions of judges. The Judicial Conference has come up with a benchmark of 500 filings per three-judge panel for requesting an additional judgeship on the appellate courts.

Nobody knows precisely what is the basis for the 500 figure except that it is a nice round number; not so long ago the magic unit was 255. While the figure is intended to be used in conjunction with other assessments, it remains the major factor and the one on which a request for additional judgeships is presumptively justified.

To be sure, there are some hard-pressed courts where the workload makes it imperative that new judges come on board. But adding judges to the federal courts is no long-range answer. In fact, the consequences of this silent revolution in the size of the judiciary could not be more serious.

Growth in the federal judiciary has three main costs. The first is that of simple inefficiency. Large circuit courts of appeals present problems that small ones don't have. There are more internal conflicts in circuit law. These must be resolved by more en banc hearings of the full court. If the en banc court consists, for example, of 20 judges as opposed to 12 it takes twice the time even to get the decision out. Judges on a large court

must also spend more time simply keeping abreast of the work of other panels—time that cannot be spent resolving their own cases.

The second cost is that of litigiousness. With a smaller court of appeals, the possible panel combinations of three judges are less numerous and the law is more coherent. Legal principles are discernible and judicial outcomes are predictable. As a court grows, so do the possible panel combinations, and the law becomes fuzzier and less distinct. Litigation takes on the properties of a game of chance and litigants are encouraged to come to court for their roll of the dice. When legal outcomes are uncertain, cases are brought for their settlement value and parties lack clear guideposts for their conduct out of court.

The third cost of judicial growth is that of intrusiveness. The number of life-tenured federal judges now exceeds the membership of Congress. The outpouring of federal law from this expanding establishment touches every local issue and affects every public official. Local disputes are tossed into federal court on the assumption that there will always be plenty of federal judges around to resolve them. In the end, unrestricted growth in the federal judiciary threatens to upset the federal-state balance just as much as uncontrolled growth in the federal budget would. With more federal judges will come more federal rulings, and with more federal rulings will come more opportunities for federal judicial intervention into even the smallest of controversies in our classrooms, our workplaces, our prisons, our zoning boards, our city council chambers and the like.

Congress must preserve an independent judiciary without sanctioning an intrusive one. It can strike this balance by imposing a ceiling on judicial growth and setting limits beyond which the size of the federal judiciary may not expand. A numerical cap would strike a historical blow for limited government. But it would have other advantages also. It would allow each party to fill judicial vacancies but only up to the point of the numerical limit. A cap would force Congress to think about what is, and what is not, the proper business of the federal courts.

As for the judiciary, a cap would force courts to adopt innovative management techniques. In the Fourth Circuit, we have established a sophisticated tracking system that requires straightforward appeals to be resolved promptly and inexpensively. This step would not have been taken if we had assumed that the addition of new judges was the solution to our problems.

The alternative to a cap is a federal judiciary that, at the current pace of growth, will number more than 2,000 well before the middle of the next century. Judge Jon Newman, a Carter appointee to the Second Circuit, and Judge Robert Parker, a Clinton appointee to the Fifth Circuit, have spoken eloquently of the threat that judicial growth poses to the collegial functioning of appellate courts, to the stability of legal precedent and to the historic regional characteristics of the federal judicial system. Indeed, if the courts of appeals become much larger, the temptation will be to break them up into smaller and more parochial units. With this development, we shall have surrendered a national and regional perspective on American law.

I have heard it said that those who favor a cap on growth are nothing more than elitists supporting a small and exclusive club. The truth is just the opposite. The real elitists are those who would deprive the American people of the right to determine their own destiny and would lodge their collective fate in an overgrown federal judicial establishment. Federal courts play an important role in the protection of a uniform law and our fundamental liberties. But with unrestricted growth it will become an all-important role. I cannot imagine a more unhealthy development for our society.

Mr. GRASSLEY. Mr. President, in order to reverse this trend, the report resoundly concluded that Congress needed to reduce the jurisdiction of the federal courts.

In the last Congress, the Republican leadership wisely pushed for measures designed to reduce the federal workload. Both the Antiterrorism and Effective Death Penalty Act and the Prison Litigation Reform Act ''streamlined'' procedures so as to decrease the number of potential federal court filings. These measures were praised by the Chief Justice as ''promising examples of how Congress can reduce the disparity between resources and workload in the federal judiciary without endangering its distinctive character.''

Similarly, a bill I sponsored, The Federal Courts Improvement Act of 1996, included a provision that raised the threshold for diversity jurisdiction cases. It's estimated this provision alone reduced the federal workload by as many as 10,000 filings per year.

In addition to what had been a continually expanding jurisdiction, the judiciary's increasing case filings was also a result, in large measure, from the policies and practices of the current Administration. Over the last year, the Executive Branch alone increased its number of civil filings by 23%. This increase, in addition to the increase resulting from expanded federal jurisdiction, accounted for the total overall increase in the number of civil filings in 1997.

The policies and practices of the President have also crippled the criminal justice system. President Clinton has yet to present even a single nominee to fill the six vacancies on the seven seat Sentencing Commission. As a result, the Commission is ''seriously hindered'' in pursuing its important statutory functions, making it more likely that criminals may ''beat the system.''

The Ninth Circuit probably suffers the most from President Clinton's indifference to the judiciary's plight. The President sent up only six nominees to fill 10 vacant seats on the Ninth Circuit. One nominee has already withdrawn from consideration, leaving only four nominees to fill over one-third of the Circuit's total seats. To our credit, the Senate also just confirmed one of these nominees to this court a few days ago who had only been pending for a few months. Having solid qualifications and bi-partisan support, the Senate confirmation of Barry Silverman illustrates what we Republicans have long maintained. Whenever nominees can demonstrate that they follow the law as stated by the Constitution or enacted by Congress, rather than making up laws as they see fit, the Senate is prepared to expedite their nominations.

By the latest count, there are around 83 vacant seats on the federal judiciary. When Democratic Senators controlled the confirmation process in 1991 and 1992, there were 148 and 118 vacancies respectively. Why wasn't the other side talking about a judicial crisis then? No one blamed the shortcomings of the judiciary on vacancies then, but now that Republicans control the confirmation process, 83 vacancies have all of a sudden become a ''judicial crisis.'' Taking into consideration the fact that there are 42 more judges sitting on the bench today than five years ago, 83 vacancies is not such an ominous figure as some would have us believe.

Today, the Senate is working hard to confirm qualified nominees, but remains hard-pressed to fill those 83 judgeships when President Clinton has so far made only 42 nominations, which is just slightly over half of the number needed. The difficulty is only exacerbated by the President's refusal to offer new candidates after his nominees have been properly rejected by the Senate.

The case of a nominee from Texas provides an excellent example. Both Texas Senators steadfastly rejected his nomination. Traditionally, and under Senator BIDEN's former chairmanship, when even one Home State Senator disapproves of a nomination, the nomination is effectively rejected. President Clinton, however, continues to press for this flawed nominee, despite the fact that other more qualified nominees could immediately replace him.

These examples illustrate how some are trying to manipulate the vacancy issue in order to steer the public away from the real problems facing the federal judiciary. Put simply, the Chief Justice believes the judiciary's expanded jurisdiction and consequent workload is too large and needs to be cut back. Why aren't the demagogues who keep repeating the Chief Justice's point about vacancies also talking about his points of reducing jurisdiction as well as the overall number of judges? It's simple. They are being selective, because they don't agree with the Chief Justice's major arguments. They want to continually expand federal jurisdiction, and continually expand the number of judges.

I agree with the Chief Justice that we should attempt to process qualified nominees in a timely manner and then have a vote. Of course some of the nominees we have been getting are not qualified or are flawed in some way.

But, at the same time, Congress should refrain from expanding the overall size of the federal judiciary. As chairman of the Subcommittee on Administrative Oversight and the Courts, I have been conducting a review of the nation's judgeship needs. I hope to have this review completed by this summer. Although it may be true that additional judges are needed in some areas, it is also the case that judgeships should be reduced or at least not filled in other jurisdictions.

A number of these 83 judgeships are not even needed. For instance, in the Judiciary Committee we have already made the case that the 12th seat in the D.C. Circuit should not be filled. We have had chief judges in other courts testify that they don't need seats in their courts filled. This further undermines the argument that there is some kind of a vacancy crisis. As a matter of fact, three of these vacant seats were created in 1990 and have never been filled. If they were so necessary, why didn't a Democrat-controlled Senate fill them in the four years it had to do it? I think the answer is self-explanatory, Mr. President. Those who charge that Republicans are practicing partisan politics against Clinton nominees are the same crowd that brought partisan politics to an art form against Reagan and Bush nominees.

Mr. President, I intend to speak on this matter more as we continue to consider nominees and debate the issue of judicial vacancies further. I urge my colleagues on this side of the isle to do the same.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate now proceed to executive session to consider the nomination of Frederica Massiah-Jackson.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HATCH. Let me also note for the record, there is no objection on the part of the minority, at least I have been informed there is no objection, to proceeding with this debate at this time.

NOMINATION OF FREDERICA A. MASSIAH-JACKSON, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read the nomination of Frederica A. Massiah-Jackson, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania.

Mr. HATCH. Mr. President, I rise today to express my strong concerns with respect to President Clinton's nominee to be a U.S. district court judge for the Eastern District of Pennsylvania—Judge Frederica Massiah-Jackson. I voted for this nominee in committee, but on the basis of information that has been presented to the committee since Judge Massiah-Jackson's hearing, I now have serious reservations about her nomination.

Judge Massiah-Jackson, who currently serves as a State court trial judge in Philadelphia, was nominated by President Clinton on July 31, 1997, to serve in the Eastern District of Pennsylvania. The Judiciary Committee received her completed paperwork on August 15 and began processing her nomination around mid-September. The committee began, in bipartisan fashion, to review what available information there was on her background, her qualifications, and her experience.

The committee's assessment of that information was directed from the outset to serious allegations that were leveled against Judge Massiah-Jackson. In particular, the committee's bipartisan investigative team followed up on allegations that Judge Massiah-Jackson was biased against law enforcement, that she was unduly lenient in sentencing career criminal offenders, and that she lacks proper judicial temperament, as shown with her use of profanity while sitting on the bench.

Despite attempts to investigate seriously these allegations, no one was willing to come forward publicly during the initial investigation with specific and credible evidence or information showing a general bias against law enforcement. In fact, Judge Massiah-Jackson, when confronted with this allegation, had denied having such a bias.

I was particularly troubled by a newspaper account reporting that Judge Massiah-Jackson had identified two undercover officers in open court and warned the spectators to watch out for them. No one, however, came forward to substantiate those charges.

But the committee's investigation did unearth some very troubling information. Judge Massiah-Jackson herself admitted to using profanity at least once while sitting as a judge—she admitted to cursing at a prosecutor in open court; it was not pleasant, and the profanity was not incidental profanity—but she expressed contrition about that event. Indeed, she promised the committee that, if confirmed, she would act appropriately as a Federal district judge.

Now, I take charges of intemperance from the bench seriously. Judges, by their very position, must remain above the fray. They must, by their demeanor and comportment, preside with dignity over their courtrooms and set an example for the attorneys and witnesses to follow. Nevertheless, as a former litigator, I know that in the rough and tumble world of courtroom advocacy that sometimes things can get a bit out of hand. That at least places such untoward remarks in some kind of context. Judge Massiah-Jackson assured the committee that she would conduct herself in an appropriate manner in the future, and that such mistakes as had occurred were early in her tenure on the bench and that she would never allow that to happen again.

The committee's investigation also confirmed that Judge Massiah-Jackson's sentences, while not grossly out of line with those imposed by other State judges, were indeed very lenient on average.

By the time the committee held a hearing on Judge Massiah-Jackson, it was clear to me that she had exercised questionable judgment in a number of cases, that she was softer on crime than I would wish a Federal judge to be, and that there were some serious questions about her ability to preside over a courtroom with the level of decorum that our citizens have the right to expect.

It was clear to me, in a word, that Judge Massiah-Jackson would never be my nominee to the Federal bench. But the Constitution does not vest judicial appointment authority in the Senate. She is President Clinton's nominee. I have never viewed my advise-and-consent responsibilities as an opportunity to second-guess whoever is the President—so long as he sends us nominees who are well qualified to serve and whose views, while perhaps not my own, reflect a commitment to uphold the Constitution and abide by the rule of law.

For that reason, I anticipated that the nominee's responses during her hearing would be extremely important to my own vote. To my mind, those responses would determine whether there was reason to expect that Judge Massiah-Jackson could yet be a credit to the Federal bench.

During her hearing, Judge Massiah-Jackson was questioned extensively about her sentencing record in various cases, she was asked about charges she was antiprosecution, and she was asked to explain the incident in which she had cursed at prosecutors.

After the hearing, members of the committee posed further questions in writing, to which she responded.

In a nutshell, Judge Massiah-Jackson again apologized for her use of profanity in the courtroom and she made every effort to persuade us she has the highest respect for law enforcement and for the difficult job that police officers have to do in our country.

Of particular significance to me, Judge Massiah-Jackson expressly disputed the published press report that indicated she had used her job as a State judge to expose the identities of undercover police officers—in open court, I might add—and to warn the spectators against them. In response to a written question from Senator THURMOND, she flatly denied that such an event had occurred.

On the faith of those assurances and the assurances of those who knew her and know her, and while reviewing the issue very closely, I voted with a majority of my colleagues to report her nomination favorably out of the committee.